

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

AYOTUNDA LOVETT, individually	)	
and on behalf of all similarly situated	)	
persons,	)	
	)	
Plaintiffs,	)	
	)	Civil Action File No.:
v.	)	1:14-CV-0983-WSD-JSA
	)	
SJAC FULTON IND I, LLC d/b/a	)	
ZAXBY’S, SJAC FOOD GROUPS,	)	
LLC d/b/a ZAXBY’S, and Does 1	)	
through 10	)	<u>Jury Trial Demanded</u>
	)	
<u>Defendants.</u>	)	

**DEFENDANTS’ MOTION TO STRIKE PLAINTIFF’S NOTICE OF FILING  
EXHIBITS IN RESPONSE TO COURT ORDER DE 204**

Defendants respectfully move that this Court Strike Plaintiff’s Notice of Filing Exhibits in Response to Court Order DE 204 (the “Notice”) which seeks to belatedly file Exhibits 4 and 9 to Plaintiff’s Statement of Material Facts (“Plaintiff’s SOMF”) in support of her motion for partial summary judgment because they contain confidential and proprietary materials unsuitable for public filing.

On November 5, 2015 – ten (10) days after her summary judgment brief was due – Plaintiff filed a motion seeking to file, under seal, the documents which purportedly represented Exhibits 4 and 9 to her SOMF. [See D.E. 168]. The Exhibits were confidential, proprietary manuals provided to Plaintiff by non-party Zaxby

Franchising, Inc. (“ZFI”). In his Order and Non-Final Report and Recommendation on a Motion for Summary Judgment, the Magistrate Judge denied Plaintiff’s Motion to Seal, but “in recognition that a non-party’s interests may be at issue, and out of a desire to act cautiously with regard to possible business secrets,” the Court ordered that these Exhibits be held in Chambers and not filed for twenty-one days. [See D.E. 200 at 67-68]. The Court also demanded that the Plaintiff “immediately serve this Order on [ZFI] and file proof of such service on the docket.” [See *id.* at 68.] The Court’s Order further stated that it would grant ZFI leave to file another motion to seal the Exhibits within the twenty-one-day time period. [*Id.*]

On June 6, 2016, Plaintiff submitted its Notice and publicly filed ZFI’s confidential and proprietary documents without authorization. Upon inquiry with ZFI, ZFI’s counsel has confirmed that Plaintiff’s counsel *never* served it with the Court’s May 2, 2016 Order [D.E. 200] providing ZFI with twenty-one days to file a motion to seal its confidential documents. Additionally, Plaintiff has failed to comply with the Court’s order *requiring* her to file proof that it served ZFI with the Court’s Order on the docket. Thus, Plaintiff has inexplicably and inexcusably refused to comply with the directives of this Court to ZFI’s detriment.

Therefore, in an attempt to preserve the confidential nature of non-party ZFI’s business secrets in accordance with the spirit of this Court’s May 2, 2016 Order, Defendants respectfully request that this Court strike Plaintiff’s Notice and seal

Exhibits 4 and 9 to Plaintiff's Statement of Material Facts pending proper notification to ZFI with an opportunity to file a motion to seal.

Finally, Defendants' note that Plaintiffs' filing was unnecessary given that the Exhibits were filed in support of her Motion for Summary Judgment, which the Magistrate Judge denied in his Report and Recommendation. Plaintiff did not appeal the Magistrate Judge's denial of her motion, therefore the Magistrate Judge's finding is unopposed and this filing is unnecessary.

Respectfully submitted this 7th day of June, 2016.

/s/ David Long-Daniels

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*Attorneys for Defendants*

**CERTIFICATE OF COMPLIANCE WITH L.R. 5.1C**

I HEREBY CERTIFY that the foregoing was prepared in Times New Roman,  
14-point font, as approved by Local Rule 5.1C.

/s/ David W. Long-Daniels

David W. Long-Daniels

*Attorney for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that, on the date stated below, I electronically filed the foregoing document with the Court through its CM/ECF service which shall send electronic notice of said filing to the following attorneys of record:

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Dated: June 7, 2016

/s/ David W. Long-Daniels  
David W. Long-Daniels

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